

MULTIMEDIA



UNIVERSITY

STUDENT ID NO

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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2022/2023 SESSION (TERM ID 2210)

UPP4712- PROFESSIONAL PRACTICE I
(All sections / Groups)

06 FEBRUARY 2023

Reading Time: 9.00 a.m. – 9.15 a.m.
(15 minutes)

Answering Time: 9.15 a.m. – 12.15 p.m.
(3 hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **FIFTEEN (15) MINUTES** during which they may read the question paper and **ONLY** make rough notes on the question paper. Students then have the remaining **THREE (3) HOURS** to answer the questions.
2. This Question paper consists of 6 pages with 4 Questions only.
3. This paper consists of two parts. **Part A:** Answer only **ONE (1) QUESTION**. **PART B:** Answer **ALL QUESTIONS**. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPY** of Legal Profession Act 1976 (Act 166), Rules & Orders.

“Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

PART A: CHOOSE EITHER QUESTION 1(A) OR 1(B)**QUESTION 1 (A)**

Helena Tan and Julian Ch'ng are partners of Messrs Helena & Julian at Solaris Dutamas, Kuala Lumpur. The main area of practice is criminal litigation and conveyancing. For the past 10 years, they have built a good reputation both in Court and among clients. As the firm grows, both partners decided that it is best to venture into civil litigation and therefore, they decided to appoint William Chong as their new partner. It was agreed that William Chong, as a salaried partner, will receive 10% of every new file that he introduces to the firm and 50% of the total professional fees for the cases that he wins.

William Chong is excited about this and he is desperate to prove himself to both partners. He is also pressured by his personal financial commitments. As a result, he has developed a habit of withholding authorities from the Court as one of his strategies to win cases. Not only that he concealed important documents from the Court, he also did not disclose the relevant binding authorities which would assist the Court to deliver fair judgment.

Aside from that, in desperation to get many good clienteles, he has managed to convince his Uncle, Jared Chong, who is running a business of precast products to retain Messrs Helena & Julian and to appoint himself as the Company's acting Advocate & Solicitor for every arising legal matter, including civil litigation cases.

Recently, Jared Chong's business rival, Mr Sudesh sued his Company for breach of contract amounting to RM18,000,000.00. William Chong represents his Uncle in Court. During the course of the Trial, Mr Sudesh argued with Jared Chong and accused him of being selfish, taking bribery and even making nasty remarks about his attitude. The commotion between both parties continued for about 5 minutes in Court and thereafter, Mr Sudesh revealed the fact that both William Chong and Jared Chong are related. William Chong could no longer control his temper and continued to bicker with Mr Sudesh in Court. The situation got out of control. The Court had to interfere and warn all parties to stop bickering and respect the Court. The Trial was then postponed to another date.

Critically analyse William Chong's conduct as a lawyer in relation to the law and rules governing the legal profession in Malaysia. Support your answer with relevant cases.

(TOTAL:25 MARKS)

Continued...

QUESTION 1 (B)

On January 2022, Plaintiff was admitted to 1st Defendant's Hospital i.e.: Puteri Specialist Hospital due to abdominal pain, fever and incomplete voiding of urine. Upon advice by the 2nd Defendant, Dr Caspar, Plaintiff underwent surgery by way of laparoscopy and appendicectomy. Both surgeries were conducted on February 2022, under the care, treatment and management of Dr Caspar.

After the said surgeries, Plaintiff informed Dr Caspar about her shoulder discomfort but the range of movement was minimally affected. According to Dr Caspar, the symptoms could be due to the effect of pneumoperitoneum during laparoscopic surgery.

The Plaintiff sought for the second opinion from an Orthopedic Consultant from Puteri Specialist Hospital and was diagnosed differently, i.e.: with light acromion process fracture and right greater tuberosity fracture of the humerus due to the injury of her right shoulder. Having regards to the above, the Plaintiff then appointed Messrs Damia & Associates to represent her to sue both Defendants for medical negligence in the treatment and movement of the Plaintiff. The 1st Defendant was represented by Messrs Danial & Partners and the 2nd Defendant was represented by Messrs Susek & Partners.

Both parties agreed to explore a negotiation process prior to initiating a legal suit in Court, on a without prejudice basis. In this regard, the Plaintiff's solicitors, i.e.: Mia from Damia & Associates have requested both defendants' solicitors i.e.: Azlan from Messrs Danial & Partners and Aloy from Messrs Susek & Partners who are the junior associates of the respective firms to give an undertaking that their clients would agree to a settlement sum of RM1,000,000.00 to be paid to her client in twenty-four (24) hours. Both Azlan and Aloy have innocently agreed to the same in writing, without checking with their managing partners or their clients as they believed that it was a good settlement proposal. As soon as the managing partners of both defendants' solicitors found out about it, they refused to honour the undertaking given and alleged that the undertaking given by both Azlan and Aloy did not bind the firm.

Based on the abovementioned facts:

- (a) Critically analyse the undertaking given by both defendants' solicitors.

(10 marks)

- (b) Determine the enforcement of undertakings given.

(15 marks)

(TOTAL:25 MARKS)

Continued...

SECTION B : ANSWER ALL QUESTIONS**QUESTION 2**

Maliq is facing defamation charges for making defamatory and degrading statements on Instagram against a well-known actress, Yasmin. He has approached Natasha to seek legal advice and to represent her in Court for his upcoming trial. In this regard, Natasha has issued a comprehensive legal opinion to Maliq and advised Maliq on the best way to move forward. This involves, among others, not accepting Yasmin's offer for Maliq to delete the defamatory and degrading statement posted on Instagram and to organize a public conference as soon as possible to apologize to Yasmin for his actions. Maliq does not have a good feeling about the approach and intends to accept Yasmin's offer as he does not want to prolong the matter and he sees this as an opportunity to settle the matter outside court. Be that as it may, Natasha does not allow him to do so under any circumstances without any justifiable reason, save and except the assumption that Yasmin's offer is just a trap. Maliq relies on Natasha's legal advice and proceeded to the trial. Unfortunately, Maliq was found guilty by the Court and as a consequence of his refusal to mitigate the situation by accepting Yasmin's offer prior to the trial, the Court was of the view that Maliq has not shown any remorse and was not confident that Maliq will not repeat it. As such, a hefty fine of RM80,000.00 was imposed on Maliq and it has to be paid within fourteen (14) days from the date of the Order.

Maliq was unhappy and blamed Natasha. Maliq then approaches you, to seek legal advice regarding the liability and immunity of Natasha in her capacity as the Advocate & Solicitors in Malaysia. Maliq wants clarification on the following matters, before deciding to file a suit against Natasha:-

- (a) Examine whether Natasha has satisfied all elements to constitute liability.

(15 marks)

- (b) Illustrate the position of law in Malaysia regarding immunity and liability of Advocate and Solicitors of Malaysia. Support your answer with relevant cases.

(10 marks)

(TOTAL: 25 MARKS)

Continued...

QUESTION 3

- (a) Radin is a final year law student from Multimedia University (MMU). After the final examination, he started his chambering with Messrs Ahmad Ibrahim & Co straight away but after 1 month, he found out that he had failed 2 papers in the final examination. His appeal to sit for supplementary examination was declined.

At the same time, his pupil-master, Mr Azlan found out from his peers that Radin was once convicted for Assault or Criminal Force in attempt to commit theft of property carried by a person pursuant to Section 356 of the Penal Code (Act 574) when he was in his 2nd year of law school. However, since it was his first offence and considering that the victim did not suffer serious injuries, he was only punished to pay fine of RM5,000.00. It has also come to Mr Azlan's attention later that Radin has yet to pass the Bahasa Malaysia Qualifying Examination. Despite not getting an exemption for Bahasa Malaysia due to his poor SPM result for the said subject, Radin forgot to take the Bahasa Malaysia Qualifying Examination as he was so busy.

Examine whether Radin can be considered as a qualified person to be admitted as an advocate and solicitor of Malaya. Illustrate your answer with relevant authorities and case law.

(10 marks)

- (b) Priscilla was charged for Theft pursuant to Section 378 of the Penal Code. She retained her neighbour, Clarence, who were just called to the Bar last month as her advocate and solicitor to defend her. During the trial, Clarence failed to call the relevant witnesses and due to his poor skills in asking cross-examination questions, Priscilla was put in a bad light although she has good defence.

As a result, thereof, Priscilla was found guilty and was sentenced to 3 years' imprisonment. Stay of Execution of Judgment was granted, and Priscilla proceeded to file an appeal. She has appointed you as her new advocate and solicitor. She filed an action for damages against Clarence on the allegation that Clarence did not handle the case properly based on special skills and knowledge expected of him as an advocate and solicitor.

Evaluate whether Priscilla can claim for damages against Clarence. Illustrate your answer relevant authorities and case law.

(15 marks)

(TOTAL: 25 MARKS)

QUESTION 4

- (a) “...the root principle on which this inherent power to punish for contempt is founded and the purpose for which it must be exercised, is not to vindicate the dignity of the individual judge/other judicial officers of the Court itself, but to prevent an undue interference with the administration of justice in the public interest”

As per Brown J, in *Re HE Kingdon v SC Goho* [1948] MLJ 17, cited by Abdul Hamid J in *Public Prosecutor v Straits Times (M) Bhd* [1971] 1 MLJ 69.

Analyse the above statement with regard to the distinction between criminal and civil contempt.

(15 marks)

Continued...

- (b) "A solicitor's authority flows from his retainer. His authority to act is limited by any special condition imposed and supplemented by any special authority conferred by it."

As per Edgar Joseph Jr FCJ, in *Teh Eok Kee & Anor v Tan Chiah Hock & Anor* [1995] 3 MLJ 613.

Illustrate the consequence for a counsel who acts without authority. Support your answer with relevant authorities and case law.

(10 marks)

(TOTAL: 25 MARKS)

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